

**EQUAL EMPLOYMENT OPPORTUNITY / DISCRIMINATION / SEXUAL HARASSMENT POLICY  
TULARE COUNTY PERSONNEL RULE 14**

**Instructions: Please read this policy, sign the last page, and return it to your supervisor.**

This policy is in conformance with Federal and State requirements. This policy applies to all unrepresented employees immediately upon adoption by the Board of Supervisors and to represented employees upon completion of meet and confer. This policy was revised on June 20, 2017.

**14.1 GENERAL POLICY ON EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of the County of Tulare to provide equal employment opportunity to all persons.

All County recruitment, hiring, training, promotion, transferring, and related personnel transactions shall be done without regard to race, color, religion, national origin, sex, sexual orientation, gender identification, creed, political affiliation, ancestry, marital status, age, or disability or other criteria prohibited by law not constituting bona fide occupational qualifications and all personnel policies, procedures, and practices shall be administered accordingly.

The County of Tulare recognizes its responsibility to provide equal employment opportunity, to take affirmative and direct action at all levels of County government, regarding job classifications, salaries, training, fringe benefits, and other personnel policies, and to improve employment and career opportunities for minority group persons and women according to affirmative action principles.

Appointing Authorities are required to assure that equal employment opportunity concepts are supported by their departments.

For purposes of this section, "bullying" or "abusive conduct" means conduct of an employer or employee in the workplace with malice that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious. That behavior can be from a supervisor to an employee, or the other way around. It also can occur between employees, or even come from a third party who visits the workplace.

**14.2 GENERAL POLICY ON DISCRIMINATION AND SEXUAL HARASSMENT**

Tulare County, as part of its continuing affirmative action efforts and pursuant to the guidelines on discrimination issued by the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, and/or the Labor Commissioner, fully supports efforts to protect and safeguard the rights and opportunities of all people to seek, obtain and hold employment without discrimination or sexual harassment. It is the policy of Tulare County that all applicants and employees are entitled to a work environment which is free from unlawful discrimination and to provide reasonable accommodation to qualified employees with physical or mental disabilities.

Discrimination and sexual harassment are violations of Labor Code section 1102, Title VII of the Civil Rights Act of 1964 and Gov. Code Sect. 12941 et. seq. It is against the policies of the County for any employee, male or female, to discriminate against or sexually harass another employee.

Discrimination and/or sexual harassment can decrease work productivity, undermine the integrity of employment relationships, decrease morale and cause severe emotional and physical stress.

1. All employees shall be informed of the discrimination complaint process and be assured of their right to file complaints without fear of reprisal. All employees, including supervisors and managers, should be trained regarding behavior that constitutes discrimination or sexual harassment. Employees should also understand the importance of reporting incidents immediately to assure

that further incidents do not occur.

2. The Board of Supervisors expects County department heads to convey to their employees the unacceptability of discrimination and sexual harassment, and to clearly inform them that behavior that constitutes discrimination or sexual harassment will not be tolerated. The department head shall make employees aware that discrimination or sexual harassment of another employee, a client or a member of the public while the employee is on duty and/or representing the County is grounds for disciplinary action up to and including termination.

3. It is the policy of the County of Tulare to provide equal employment opportunity to all persons.

#### 14.3 **DEFINITION OF DISCRIMINATION**

Discrimination, as defined in State and Federal law, is any unlawful consideration or use of race, color, religion, national origin, sex, sexual orientation, creed, political affiliation, ancestry, marital status, age, physical disability, or mental disability or any other criteria prohibited by law (except where such criteria is a bona fide occupational qualification) in recruitment, hiring, training, promotion, transferring, discipline, termination, or other personnel action.

#### 14.4 **DEFINITION OF SEXUAL HARASSMENT**

1. Sexual harassment is a form of discrimination based on sex. Sexual harassment, as used in this policy, includes any unsolicited and unwelcome sexual overtures or actions by any employee, supervisor, or manager, whenever:

a) Submission is made either explicitly or implicitly a term or condition of employment;

b) Submission or rejection by an employee is used as a basis for employment decisions affecting the employee; or,

c) Such conduct affects an employee's work performance negatively or creates an intimidating, hostile or otherwise offensive work environment. Sexual harassment also includes any unsolicited and unwanted sexual overtures or actions directed to an employee by a client, citizen or member of the public in the workplace or while the employee is performing their duties for the County.

2. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature that would not be considered sexual harassment by a reasonable person. It refers to behavior that is not welcome, that is personally offensive, that fails to respect the rights of others, that lowers morale and that, therefore, interferes with work effectiveness. Sexual harassment may take different forms. One specific form is the demand for sexual favors. Other forms of harassment include:

- Verbal Sexual innuendos, suggestive comments, whistling, jokes of a sexual nature, sexual propositions, sexual threats.

- Visual Sexually suggestive objects, pictures, or cartoons, graphic commentaries, leering, obscene gestures.

- Physical Unwanted physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, assault.

3. Sexual harassment may be overt or subtle. Some behavior which may be appropriate in a social setting away from the work site may not be appropriate in the workplace. But whatever form it takes, verbal, non-verbal or physical, sexual harassment can be insulting and demeaning to the recipient and cannot be tolerated in the workplace.

**14.5 DEFINITION OF MENTAL DISABILITY**

"Mental disability" includes, but is not limited to, all of the following:

- 1) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:
  - a) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
  - b) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
  - c) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.
- 2) Any other mental or psychological disorder or condition not described in paragraph 14.4.1 a) that requires special education or related services.
- 3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.
- 4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.
- 5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).
- 6) "Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psycho active substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

**14.6 DEFINITION OF PHYSICAL DISABILITY**

"Physical disability" includes, but is not limited to, all of the following:

1. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
  - a) Affects one or more of the following body systems: neurological, immunological, muscular skeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
  - b) Limits a "major life activity". For purposes of this section:
    - (i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
    - (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

2. Any other health impairment not described in paragraph (1) that requires special education or related services.

3. Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

4. Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

5. Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

6. "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

#### 14.7 **IMPROPER CONDUCT**

A County official, manager, supervisor or employee will be subject to disciplinary action for:

1. Failing to take corrective action when the officials or supervisory employees know, or reasonably should know, that an employee or applicant for employment is being subjected to prohibited sexual harassment or discrimination on the job by anyone, or

2. Retaliation against an employee or applicant for employment who complained of sexual harassment or discrimination, or who testified on behalf of one who made a complaint, or who assisted or participated in any manner on behalf of a complainant in an investigation, proceeding or hearing conducted under this policy.

#### 14.8 **DEPARTMENT OBLIGATION AND RESPONSIBILITY**

Every department has an obligation to assure that the work environment is free from all types of unlawful discrimination--including sexual harassment. Prevention is the best tool. Prompt, appropriate action may help to avoid, or at least minimize, the incidence of discrimination or sexual harassment.

By law, department heads, other managers and supervisors may be held responsible for the actions of their employees. Department heads must ensure that employees, supervisors and managers are aware of the County's policy. Supervisory training and employee orientation programs should include information about the County's nondiscrimination/ sexual harassment policy. This policy will be distributed to all employees annually with each employee signing an acknowledgment of receipt and understanding of the requirements of the policy.

#### 14.9 **EMPLOYEE ACTION**

Many persons are not aware that their behavior is offensive or potentially discriminatory or harassing. Often simply advising someone of the offensive nature of their behavior will resolve the problem. Whenever possible, employees should inform the discriminator/harasser that his or her behavior is unwelcome, offensive, in poor taste or highly inappropriate. If this does not resolve the concern or if an employee feels threatened, or has difficulty expressing his or her concern and therefore does not feel comfortable confronting the discriminator/harasser, the complaint procedure should be used.

**14.10 COMPLAINT PROCEDURE**

The complaint procedure has been determined as the most appropriate means for registering a complaint of discrimination or sexual harassment to insure an appropriate and timely investigation and resolution. Complainants pursuing other methods will be redirected to this procedure.

Nevertheless, Department Heads, other managers and supervisors have a legal obligation to effectively deal with any and all reported or observed incidents that may constitute sexual harassment or discrimination whether or not a complaint has been registered through the appropriate procedure.

**14.10.1 Managers and Supervisors shall:**

- a. Immediately report all reported and/or observed incidents and their supporting facts to their Department Head.
- b. Thoroughly document all reported and/or observed incidents and their supporting facts.

**14.10.2 Department Heads shall:**

- a. Immediately report all reported and/or observed incidents and their supporting facts to the Human Resources Officer who will inform the Human Resources Director.
- b. Thoroughly document all reported and/or observed incidents and their supporting facts.

**14.10.3 Within the context of the Complaint Procedure:**

a. Any employee who believes he or she has been the subject of discrimination or sexual harassment shall report the alleged act immediately to his or her department supervisor, or, if the complaint is against actions of the supervisor, the alleged acts shall be reported to his or her department head, or the County Human Resources Director. When a complaint is made through the Human Resources Director, the Human Resources Director will inform the Department Head of the complaint unless the complaint is against the Department Head.

A supervisory employee receiving a complaint of discrimination or sexual harassment shall immediately inform their Department Head of the complaint even if the complainant requests the incident(s) be kept confidential. The Department Head will immediately notify the County Human Resources Director of the complaint. The County Human Resources Director has full authority to investigate all aspects of the complaint, and to notify County Counsel of the allegation.

b. The results of the investigation shall be reported to the County Administrative Officer (CAO) along with a recommended action and remedy, if deemed appropriate. The CAO will review the results of the investigation and any recommended actions, then take whatever action he or she deems necessary and appropriate.

c. Upon conclusion of the investigation, the Human Resources Director will notify the Appointing Authority and employee in accord with the restrictions set forth in Federal and State law.

*(Please this policy, sign below, and return it to your supervisor.)*

I have read this policy and I understand my rights and obligations under this policy. I agree to comply with the policy. I understand that violation of this policy will likely result in serious disciplinary action up to and including dismissal.

Print Your Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Dept \_\_\_\_\_